224.[256] Indeed, SWBT was found to have fully satisfied the requirements of this checklist item in the Final Staff Report to the Collaborative Process.[257] In addition, SWBT provided a Master Agreement that has been incorporated into the T2A.[258] SWBT has made the agreement available to any CLEC, and additionally will allow CLECs to negotiate modifications or additions to the Master Agreement upon request.[259] The rates in the Master Agreement comply with the methodology set out in 47 U.S.C. § 224(d)(1).[260] Also, SWBT makes all unassigned space available to all telecommunications carriers on a first-come, first-served basis.[261] SWBT evaluates CLECs' requests for access by using the same standards that apply to SWBT's own use of the same facilities.[262]

In *BellSouth Louisiana*, the Commission looked at four processes to determine satisfaction of this checklist item: 1) evaluation of facilities request; 2) access to facilities information; 3) choice of workforce; and 4) rates.[263] The approved language implements these criteria. First, SWBT must provide a response to CLEC's request for license within 45 days, or it will be deemed granted.[264] Second, SWBT must provide access to records and certain information relating to poles, ducts, conduits, and rights-of-way.[265] Third, SWBT allows CLECs to use their own contractors or personnel as long as they have the same qualifications, in terms of training, as SWBT's own workers.[266] Finally, SWBT has established "just and reasonable" rates that comply with Section 224 and Commission decisions.[267]

In addition to being legally obligated to provide checklist item 3, SWBT is actually providing this item, which is apparent from the performance measure data. Two performance measures have been established: 1) PM-105, Percent of requests processed within 35 days; and 2) PM-106, Average days required to process a request. The first measure, PM-105, sets a benchmark at 90% of requests processed within 35 days. SWBT's performance data indicates

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[256] 47 U.S.C. § 271(c)(2)(B)(iii); T2A, Attach. 13, App. Poles, Conduits, and Rights-of-Way; *See generally*, Affidavit of James A. Hearst, Application of Southwestern Bell Telephone Company, Appendix A-2, Tab 4 (Jan. 10, 2000) (hereinafter "Hearst Aff.").

[257] Final Staff Status Report.

[258] T2A, Attach. 13; Hearst Aff., App. A-2, Tab 4, para. 8.

[259] *Id.*

[260] T2A, Attach. 13, Appendix-Poles, Conduits, and Rights-of-Way, Sec. 19.01; Hearst Aff. paras. 32-34; *see generally* Report and Order, *Amendment of Rules and Policies Governing the Attachment of Cable Television Hardware Utility Poles*, 2 FCC Rcd 4387 (1987), *clarified* 4 FCC Rcd 468 (1989).

[261] Hearst Aff., App. A-2, Tab 4, para. 11.

[262] *Id.* at para. 16.

[263] *BellSouth Louisiana I*, 13 F.C.C.R. at 20707-12, paras. 174-183.

[264] T2A, Attach. 13, Appendix-Poles, Conduits, and Rights-of-Way.

[265] *Id.* at Sec. 7.03.

[266] *Local Competition First Report and Order*, 11 FCC Rcd at 16083. *See also* T2A, Attach. 13, Appendix-Poles, Conduits, and Rights-of-Way , Sec. 6.10.

[267] T2A, Attach. 13, Appendix-Poles, Conduits, and Rights-of-Way para. 19.01; Hearst Aff., App. A-2, Tab 4, paras. 32-34; *see generally* Report and Order, *Amendment of Rules and Policies Governing the Attachment of Cable Television Hardware Utility Poles*, 2 FCC Rcd 4387 (1987), *clarified* 4 FCC Rcd 468 (1989).

that SWBT was compliant for all months in Houston. In the Central/West Texas area, SWBT was compliant in September. For all other market areas and months, the data points were fewer than ten and, therefore, no analysis is possible. PM-106 is a diagnostic measure that captures the average days required to process requests. Data supporting this measure indicates an average time to process requests ranging from 13.83 to 21.57 days depending on region. This data supports the conclusion that SWBT is well within the required benchmark and is providing nondiscriminatory access to poles, ducts, conduits, and rights-of-way.

SWBT has a legal obligation to provide nondiscriminatory access to poles, ducts, conduits, and rights-of-way. Through performance measure data and commitments in application affidavits, SWBT has shown that it is actually providing nondiscriminatory access.

Based on the evidence in the record, the Texas Commission verifies that SWBT has met the requirements of 271(c)(2)(B)(iii).

D. Checklist Item Four – Unbundled Local Loops

Has SWBT provided local loop transmission from the central office to the customer's premises, unbundled from local switching or other services in accordance with the requirements of section 271(c)(2)(B)(iv) of the FTA and applicable rules promulgated by the FCC?

The Texas Commission finds that SWBT has satisfied the requirements of checklist item 4. SWBT provides unbundled local loops to competing carriers pursuant to various interconnection agreements, including the Texas 271 Agreement, which have been approved by the Texas Commission. Pursuant to its legal obligations under various interconnection agreements, SWBT provides unbundled local loop transmission for the provision of both traditional voice services and various advanced services, in a nondiscriminatory manner. In addition, SWBT offers subloop and dark fiber unbundling that goes beyond the requirements of former Commission rule 319.[268] Provision of unbundled local loops is captured in the Texas performance measurements and the performance remedy plan applies to performance under this checklist item.

Section 271(c)(2)(B)(iv) of the FTA requires SWBT to offer "[l]ocal loop transmission from the central office to the customer's premises, unbundled from local switching or other services."[269] The Commission has defined the local loop to include a variety of different type such as "two-wire and four-wire analog voice-grade loops, and two-wire and four-wire loops that are conditioned to transmit the digital signals needed to provide such services as ISDN, ADSL, HDSL, and DS-1 level signals."[270]

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[268] 47 C.F.R. § 51.319. The new unbundling rules established in the *UNE Remand Order* are not yet effective.

[269] The Commission has defined the loop as "a transmission facility between a distribution frame, or its equivalent, in an incumbent LEC central office, and the network interface device at the customer premises." *Local Competition First Report and Order,* 11 F.C.C.R. at 15691; 47 C.F.R. § 51.319(a).

[270] *Bell Atlantic New York*, CC Docket No. 99-295, at para. 268.

Pursuant to section 251 (c)(3) of the FTA, the local loop must be provided on a nondiscriminatory basis as an unbundled network element. The nondiscriminatory access standard requires SWBT to deliver unbundled loops to CLECs, of the same quality as the loops that the SWBT uses to provide service to its own customers, within a reasonable timeframe and with a minimum of service disruption.[271] Because the ordering and provisioning of network elements has no retail analogue, SWBT must demonstrate that it provides unbundled loops to CLECs in a manner that offers them a meaningful opportunity to compete.[272]

SWBT asserts in its application that it has provisioned more than 166,000 unbundled local loops for CLECs. This number includes more than 40,000 loops provisioned on a stand-alone basis for combination with a CLEC's own switching or other facilities. Over 125,000 loops have been provisioned with unbundled switching as part of a preassembled UNE Platform.[273]

In addition, since September, 1999, the volume of CLEC requests for xDSL-capable loops has steadily increased, and by the end of 1999, SWBT had provisioned a total of 1,203 xDSL-capable loops, of which 1,181 were still in service. Of the currently operational loops, 960 were provisioned in Texas.[274]

During the Texas 271 proceeding, CLECs raised concerns relating to the provisioning of unbundled local loops. The major issues related to coordinated conversions, parity access to mechanized line testing (MLT), and provisioning of xDSL-capable loops.

1. Stand-Alone Loops

As stated in the *First Report and Order* and reiterated in the *Second BellSouth Louisiana* decision, SWBT must provide access to any functionality of the loop that a CLEC requests unless it is not technically feasible to do so.[275] If necessary to provide such functionality, SWBT may be required to condition existing loop facilities to enable CLECs to provide services not currently provided by SWBT.[276]

SWBT offers the following standard loop types under approved interconnection agreements in Texas: 2-Wire analog loop supporting analog voice frequency, with no more than 8 dB loss (5 dB loss is the standard conditioning option); 4-Wire analog loop; 2-Wire digital loop (160 Kbps) supporting Basic Rate ISDN (BRI) digital exchange services; 4-Wire digital loop

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[271] *BellSouth Louisiana II* at 20712-13, para. 185; *Bell Atlantic New York*, CC Docket No. 99-295, at para 269.

[272] *BellSouth Louisiana II* at 20717, para. 198. SWBT is also required to provide CLECs with nondiscriminatory access to various functions of its OSS systems in order to allow the CLEC to obtain unbundled loops in a timely and efficient manner. *Id.* at 20713, para. 186. *See* discussion of OSS under Checklist Item 2.

[273] Habeeb Aff., App. A-1, Tab 1, Attach. E.

[274] Chapman Aff., App. C, Vol. 138 Tab 1973, para. 4.

[275] *BellSouth Louisiana II* at 20713, para. 187.

[276] *BellSouth Louisiana II* at 20707, 20713, 20714-15, paras. 172, 187, 191-192.

(1.544 Mbps) loop supporting DS1 service including Primary Rate ISDN (PRI).[277] In addition, SWBT offers xDSL-capable loops.[278]

SWBT also offers, to the extent technically feasible, additional loop types and conditioning, including, without limitation, loops capable of carrying DS3 signals, pursuant to the Special Request process upon request of a CLEC.[279]

Even when SWBT uses integrated digital loop carrier (IDLC) technology or similar remote concentration devices for a particular loop sought by a competitor, SWBT is required to provide unbundled access to the loop.[280] Pursuant to various interconnection agreements, including the T2A, SWBT offers unbundled access to the loop where integrated digital loop carrier (IDLC) technology or Remote Switching technology is used.[281]

SWBT also offers unbundled access to subloops under various interconnection agreements including the T2A.[282] Subloop elements offered include loop distribution (the segment of the local loop extending between a remote terminal site and the end user premises) where digital loop carrier exists in the loop route.[283] Also, SWBT offers the dark fiber (under certain conditions) and the 4-wire copper cable that is conditioned for DS-1 in the feeder segment of the loop as subloop elements.[284] SWBT offers the Digital Loop Carrier (DLC) as an unbundled element on a case by case basis through the Special Request Process.[285]

To meet its obligations under checklist item 4, SWBT must also provide cross-connect facilities between an unbundled loop and a competing carrier's collocated equipment and access to unbundled network interface devices.[286] SWBT provides access to stand-alone loops through cross-connect facilities between SWBT's main distribution frame and the CLEC's collocation space.[287] SWBT offers access to the Network Interface Device (NID). The rates, terms and conditions of such access are set forth in interconnection agreements such as the T2A.[288] When

[277] T2A, Attach. 6, Sec. 4.2.1-4.2.5; Deere Aff., App. A-2, Tab 3, para. 86.

[278] T2A, Attach. 25; Deere Aff., App. A-2, Tab 3, paras. 99-110.

[279] T2A, Attach. 6, Sec. 2.22 and 4.3; Deere Aff., App. A-2, Tab 3, para. 87.

[280] Bell Atlantic New York at para. 271.

[281] T2A, Attach. 6, sec. 4.4.

[282] T2A, Attach. 6, sec. 4.6.

[283] T2A, Attach. 6, sec. 4.6.1.

[284] T2A, Attach. 6, sec. 4.6.2.

[285] T2A, Attach. 6, sec. 4.6.3.

[286] *Bell Atlantic New York*, CC Docket No. 99-295, at 272.

[287] T2A, Attach. 6, Secs. 11.0-11.6. (SWBT offers a choice of four types of cross connects with each unbundled loop type: (1) Cross connect to DCS; (2) Cross connect to Multiplexer/Interoffice; (3) Cross connect to Collocation; and (4) Cross connect to Switch Port. SWBT offers the choice of three types of cross connects with subloop elements: Two wire; Four Wire; and Dark Fiber.)

[288] T2A, Attach. 6, Secs. 3-3.5. (A CLEC can either connect to the customer's inside wire at the SWBT NID, as is, at no charge, or SWBT, for a charge, will disconnect its loop from the customer's inside wire. SWBT will perform any repairs, upgrades and rearrangements for a time and materials charge. A CLEC must provide its own NID to

a CLEC orders an unbundled loop, SWBT will provide a termination on whatever NID, if any, connects the loop to the customer premises, without additional charge.[289]

Commercial Performance

The Texas Commission staff evaluated the following performance data on stand-alone loops:

PM-56 tracks the installation interval for various loop types. The 8 db loop (1-10 loops per order) is by far the predominant UNE being currently provisioned. For the most recent three months (September through November 1999), SWBT's statewide performance for CLECs exceeded the "95 % within 3 days" benchmark. As volumes have increased, the performance has improved.

PM-58 measures the SWBT caused missed due dates. Sufficient data for August through November exists for the following categories: 8 db loop (Field Work), 8 db loop (No Field work), 5.0 db loop, and the BRI loop. SWBT's statewide performance shows parity performance for all periods, except for November's 8db (no field work) report which showed 1.4% for CLECs and 0.3% for SWBT-retail.

PM-55 measures the average installation interval for various loop types. Sufficient data for August through November exists for the following categories: 8 db loop, 5.0 db loop, and the BRI loop. SWBT's statewide performance shows compliance with the 3 day benchmark for all periods, except for October's BRI loop which showed a 5.2 day average interval for the 45 orders that month. Two other reporting periods were within 0.2 days of the benchmark.

PM-59 tracks the percent of trouble reports within 30 days for a number of loop types. Sufficient data for August through November exists for the following categories: 8 db loop, 5.0 db loop, BRI loop and the DS1 loop. SWBT's statewide performance shows parity performance for the 5db loop and the DS1 loop. Performance for 8db loops and BRI loops is slightly below parity. SWBT affiant Randy Dysart indicates that SWBT is performing a root cause analysis on the 8 db loop data, since a significant number of trouble reports are coded as "no trouble found". He also observes that SWBT has not had access to customer premises to clear troubles or to test circuits due to lack of access. This may require further refinements to the exclusion process, which will be reviewed in April 2000. Regarding BRI loops, the principal contributor to SWBT's sub-parity performance in the Central/West Texas region. The Houston and Dallas regions demonstrated parity and South Texas had very low volumes.

PM-65 measures the number of customer trouble reports within a month per 100 UNEs. Like the other non-POTS/non-UNE combos measures, these are highly disaggregated measures,

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interface to the customer's premises wiring through connections in the customer chamber, if available, of the SWBT NID, unless CLEC and the customer agree to an alternate interface. For multiple dwelling units or multiple-unit business premises, a CLEC will provide its own NID and will connect directly with the customer's inside wire without requiring any connection to the SWBT NID, unless such premises are served by "single subscriber" type NIDs.)

[289] T2A, Attach. 6, Sec. 4.2.

reflecting the variety of items which can be ordered from SWBT. Looking at the loop data in the aggregate for the months of July through November, SWBT's statewide performance was at or above parity.

PM-66 measures missed repair commitments for 2 wire analog 8 db loops. For August to November, SWBT's statewide performance shows a better than parity performance for all months.

PM-67 measures the time it takes to clear a trouble report. Like the other non-POTS/non-UNE combos measures, these are highly disaggregated measures, leading to small volumes for the less frequently ordered UNEs. As with PM-65, looking at the loop data in the aggregate for July through November, SWBT's statewide performance was markedly above parity.

PM-69 measures percent repeat reports for UNEs. Sufficient data for August through November exists for the following categories: 8 db loop with test access, 5.0 db loop with test access, and the DS1 loop with test access. SWBT's statewide performance shows better than parity performance for all reporting periods.

2. Loops Provisioned as Part of a UNE Platform

As addressed in the discussion on checklist item 2, SWBT offers loops as part of a UNE platform pursuant to interconnection agreements, and SWBT asserts it has provisioned over 125,000 loops with unbundled switching as part of a preassembled UNE Platform.[290]

The Texas Commission has always recognized that CLECs' entry may be harmed if their customers lose service during UNE-P conversion. Inasmuch as the FCC has articulated similar concerns in past 271 decisions, the Texas Commission reviewed allegations associated with this issue. Based upon complaints by AT&T and Birch Telecommunications, the Texas Commission reviewed this issue in Project No. 21000, a project established to address OSS problems through informal dispute resolution. This issue is also the subject of ongoing commercial negotiations between AT&T and SWBT, and was tested by Telcordia as part of the Texas Commission's carrier-to-carrier testing.[291]

As reported in the Affidavit of Candy Conway, AT&T submitted 539 trouble tickets from August and September 1999 for analysis. Though AT&T has suggested in various Texas Commission proceedings that outages upon conversion are a result of the disassociation of the "N," "D," and "C" orders, SWBT root cause investigation determined that 70 of the 78 disassociated orders resulted from CLEC error.[292] The actual amount of outage occurring during conversion caused by disassociation was actually .02 percent of the total orders.[293]

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[290] Habeeb Aff., App. A-1, Tab 1, Attach. E.

[291] The UNE-P test participant submitted over 500 conversion orders during third-party carrier-to-carrier testing. For further discussion, see the Final SWBT OSS Readiness Report , App. D Vol. 7, Tab 76 at Chapter 4.

[292] Affidavit of Candy R. Conway, Application of Southwestern Bell Telephone Company, App. A-4, Tab 3, para. 58 (Jan. 10, 2000) (hereinafter "Conway Aff.").

[293] *Id.*

At least one CLEC complained in Project No. 21000 of its inability to conduct MLT testing as a result of SWBT's order posting process. SWBT investigated the problem and discovered that if an error prevented a CRIS order from posting to completion the loop maintenance operation system did not process the CABS order.[294] In June 1999, SWBT changed its programming so that LMOS no longer waits for disconnect orders to post to completion before processing.[295] In the instance where a service order is created but errors out prior to posting, a CLEC user is still unable to use trouble administration. SWBT issued an accessible letter in November to address the CLECs' concerns.[296] This accessible letter notified CLECs that they may contact the LOC to establish trouble tickets prior to order completion. SWBT has established process changes including additional training and job aides for its personnel as well as a weekly task force composed of SWBT and CLEC personnel to address any potential problems relating to UNE-P conversion.[297]

As reflected in the record developed by the Texas Commission, SWBT has acted quickly to address CLEC concerns regarding outages on conversion.[298] The Texas Commission, therefore, finds that any potential problems identified by the CLECs in this proceeding have been sufficiently addressed.

Commercial Performance

The Texas Commission staff evaluated the following performance data on loops provisioned as part of a UNE platform:

PM-27 measures the average installation interval for UNE-P. For August through November, SWBT's statewide performance demonstrates better than parity performance for both field work and no field work orders.

PM-29 measures SWBT caused due dates for UNE-P. For August through November, SWBT's statewide performance demonstrates better than parity performance for both field work and no field work orders, except for August (no field work) when the percent missed due dates was 0.66% compared to 0.31% for SWBT-retail. Subsequent months showed improved performance with same or higher volumes.

PM-35 tracks the percent of trouble reports. For conversion orders requiring field work, SWBT's statewide performance shows a better than parity result for August through November. For conversion orders not requiring field work, SWBT's performance for October and November

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[294] Ham Aff., App. A-4, Tab 1, para. 223.

[295] *Id.*

[296] *Id.* at para. 225, referencing Attachment EE to Ham Aff.

[297] Conway Aff., App. A-4, Tab 3, para. 122.

[298] The Texas Commission is unaware of further evidence reflecting service outage problems experienced during UNE-P conversion.

was slightly below parity, with CLEC performance at 1.80% and 1.65% respectively, compared to SWBT-retail performance of 1.27% and 1.21%.

PM-37 reflects the trouble report rate. For UNE-P orders from August through November, SWBT's commercial performance shows parity performance, except in October, when the CLEC trouble report rate was 2.17% as compared to 2.06%. In November, SWBT provided parity performance on higher volumes.

PM-38 tracks the percent of missed repair commitment times. For August through November, SWBT's performance shows parity performance for repairs not requiring dispatch, except in August. Subsequent months showed parity performance at higher volumes. For repairs requiring dispatch, August was out of parity as well. SWBT has testified that this was related to Hurricane Bret's direct hit on southern Texas. Based on Telcordia review of this data, SWBT has put into place some process improvements which include prioritization of CLEC reports, time notification to the end user when CLEC tickets are cleared, additional metallic line tests and escalation of past due commitments.

PM-39 measures the average time it takes SWBT to repair service. For both service affecting and out-of-service events, SWBT's statewide performance for August through November was at parity, for trouble reports requiring dispatch and those not requiring dispatch.

PM-41 tracks the percent reports for repeated trouble tickets. SWBT provided parity performance in the Dallas/Ft. Worth and Central/West Texas regions during August and October, and the Houston area in October. In other areas and months where non- compliant performance occurred, SWBT conducted a root cause analysis. Most of the trouble reports were due to central office translation problems. To address these concerns SWBT has implemented new procedures that prioritize the ticket to first line managers, and escalation procedures are also put in place if the trouble ticket has not been cleared within 2 hours. In addition, SWBT will call the end user directly to notify that the trouble has been cleared. The dispatched–in jeopardy list of orders are monitored daily by managers. In October and November, statewide performance on PM-41, while still slightly below parity, improved noticeably with increased volumes.

3. MLT Testing

As a result concerns raised by CLECs during the April 1998 hearing, the Texas Commission found that SWBT must demonstrate that CLECs using recombined UNEs will have access to mechanized line testing (MLT) at parity with SWBT before the Commission can recommend that SWBT be found to have met this checklist item. This issue was resolved by SWBT's agreement to incorporate the obligation into the T2A. Section 11.3 of Attachment 6 to the T2A provides:

> Cross connects to the cage associated with unbundled local loops are available with or without automated testing and monitoring capability. If CLEC uses its own testing and monitoring services, SWBT will treat CLEC test reports as its own for purposes of procedures and time intervals for clearing trouble reports. When CLEC orders a switch port, or local loop and switch port in combination,

SWBT will, at CLEC's request, provide automated loop testing through the Local Switch rather than install a loop test point.

4. Coordinated Conversions (Hot Cuts)

The Texas Commission recognizes the importance of provisioning unbundled loops through the use of coordinated conversions[299] (hot cut or CHC) in accordance with Section 271 requirements. Ensuring that CHCs are provisioned correctly is critical to minimizing service disruption for the customer. CLECs strenuously argued during the 271 proceeding that it was critical that their customers not lose dial tone during a loop conversion process. CLECs, therefore, initially advocated performance measurements that would capture premature disconnects and late cutovers. Such measurements were established and implemented.[300]

As more CLECs entered the market and gained commercial experience, they expressed concerns over preventing extended outages during the conversion process. The T2A as approved on October 13, 1999, did not contain a performance measure to capture outages. In order to address that issue, the Texas Commission established a new performance measure, PM-114.1, *Loop Disconnect/Cross Connect Interval*, in December 1999 to measure the entire provisioning interval for coordinated hot cuts.

As part of the scope of work of carrier-to-carrier testing, the Texas Commission required testing of the ordering and provisioning processes for coordinated hot cut (CHC) UNE-L orders. As in the scope of work determination in other areas, the number of orders requiring CHCs was developed in TAG meetings with the participation of CLEC test participants based upon the CLEC input and ability to perform the required task. After issues were discovered during initial testing, Telcordia amended the monitoring procedures for the re-test to capture aspects of the CHCs that may not have been fully evident in the initial testing. These monitoring requirements dictated that Telcordia provide on-site monitoring of CHCs including participation in the coordination process as silent observers – listening in on the CLEC test participant and SWBT LOC staff as they prepared for and executed CHCs.

Telcordia evaluated 21 CHC orders during the re-test phase. In its analysis, Telcordia noted that issues surrounding coordination at the LOC during the process appeared to be manual in nature and inherent to the loop ordering process. Specifically, Telcordia noted that some of the problems may also occur in the SWBT retail environment (*e.g.*, mislabeled circuit at demarcation). Other problems were not attributable to deficiencies in SWBT personnel. Instead Telcordia concluded that deficiencies could be addressed in increased training for CLEC staff and document clarification.[301]

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[299] Coordinated Conversions (CHC), also known as "hot cuts," involve the manual disconnection of a customer's loop in the SWBT central office and reconnection at the CLEC's collocation space. CHCs also involve coordinated changes to both SWBT's and CLEC's switch software and usually involve number portability. Because the process involves manual disconnection and reconnection of the customer loop, there is a potential for extended service outage.

[300] These performance measures are incorporated as PMs-114 and 155 in Attachment 17 to the T2A.

[301] Final SWBT OSS Readiness Report at p. 23.

In its November 1999 Three Month Performance Evaluation, the Texas Commission staff reviewed SWBT's actual reported coordinated conversion performance for June through September, 1999, and found it to be compliant with established standards. However, as noted by staff, AT&T raised a concern that the reported performance data related to coordinated conversions did not accurately reflect AT&T's actual commercial experience because it did not capture service outages during the conversion process.

After consideration of the CHC data results from the Telcordia final report and the staff's Three Month Performance Evaluation, the Texas Commission required additional action to ensure the reliability of the data used to capture performance for CHCs. Because the PM data did not correspond to the allegations of AT&T, the Texas Commission found it necessary to conduct a review of the data to ensure that it accurately reflected commercial experience.

The Texas Commission therefore requested a two-track evaluation of the validity of the PMs. The first track required SWBT and AT&T to reconcile August and September commercial data on CHCs.[302] The raw data relating to Performance Measures 58, 114, and 115 as well as the data relating to UNE loop with LNP CHC outages was reconciled. During this reconciliation, SWBT and AT&T identified a number of process improvements that SWBT agreed to implement. The process improvements relate not only to the provisioning process itself, but also to the data collection aspect as well. In December, AT&T and SWBT filed affidavits documenting the results of the reconciliation and the process improvements.

The second-track required Telcordia to review and reconcile SWBT manual logs and compare them to the MCIW logs generated during testing.[303] In the course of this evaluation, Telcordia concluded that 14 of the 18 logs accurately captured the performance of SWBT. Two of the 18 logs were inconclusive because the CLEC test participant had requested an earlier time for the CHC, explaining what initially appeared to be noncompliant performance.[304] Only two of the 18 would have resulted in a penalty because the performance was substandard. Based upon the data reconciliation, the Texas Commission concluded that the PMs were accurately capturing SWBT's compliant performance.[305] As noted above, the Texas Commission, however, recognized the need to measure the entire duration of the cutover and established PM-114.1.

Commercial Performance

The Texas Commission staff evaluated the following performance data on coordinated hot cuts:

The CHC measures demonstrate that SWBT has been providing compliant performance regarding coordinated conversions for the months of August through November. PM-114 captures premature disconnects and PM-115 measures SWBT caused delayed coordinated

[302] Open Meeting Tr. at 112 (Nov. 4, 1999).

[303] Open Meeting Tr. at 83 (Nov. 4, 1999).

[304] Open Meeting Tr. at 111 (Nov. 4, 1999).

[305] Open Meeting Tr. at 110, 121 (Nov. 4, 1999).

cutovers. PM-58 is intended to capture substandard performance with loop-only cutovers, as it measures missed due dates.[306]

In response to AT&T's claim that SWBT's reported data did not accurately capture the service outages during provisioning, the Texas Commission staff evaluated the reconciled performance data.[307] In the Dallas/Ft. Worth area for the month of August, premature disconnects increased from 0.39 to 0.79 percent after reconciliation, which is still below the established benchmark of 2 percent. In September, the reconciled data remained at 0.1 percent which demonstrates compliant performance. In Houston area, the data did not change for August and the performance was at 0.6 percent which is well below the benchmark. In September, the percent premature disconnects increased form 0.06 percent to .12 percent, which is still below the benchmark.

The review of raw data on a sample of 271 CHC orders (1060 loops) for August through October showed that for September and October 100% of CHCs were completed within 2 hours, and in August SWBT completed, at a minimum 94% of CHCs within 2 hours. The percent of orders with an average conversion interval within one hour was: 96% (August); 100% (September); and 92% (October).

In December 1999, a new performance measure, PM-114.1, was established to measure the entire provisioning interval for CHCs. PM-114.1 measures the percentage of time the SWBT technician completes the cross connects to the CLEC facilities within 120 minutes. Including orders involving fieldwork, IDLC, and Frame Due Time (FDT) in the CHC performance results will be addressed at the six-month PM review; in the interim, SWBT will track these orders under CHC PMs. In addition, various aspects of performance for these order types are currently captured under existing PMs.

5. xDSL-Capable Loops

The Commission in its recent *Bell Atlantic New York Order* reiterated that "the obligation to provide access to unbundled loops capable of supporting xDSL technologies was adopted in 1996,"[308] and for the first time provided guidance on compliance requirements for provision of xDSL-capable loops:

> [W]e will find it most persuasive if future applicants under section 271, unlike this applicant, make a separate and comprehensive evidentiary showing with respect to the provision of xDSL-capable loops, either through proof of a fully operational separate advanced services affiliate as described below, which may also include appropriate performance measures, or through a showing of nondiscrimination in accordance with the guidance provided herein. Given our statutory obligation to encourage deployment of advanced services and the critical

[306] The performance for PM-58 is discussed under Stand-Alone Loops and under xDSL loops.

[307] *See* SWBT Affidavit of William R. Dysart filed at the PUCT on December 14, 1999 in PUCT Project No. 16251.

[308] *Bell Atlantic New York*, CC Docket No. 99-295 at para. 316.

> importance of the provisioning of xDSL loops to the development of the advanced service marketplace, we emphasize our intention to examine this issue closely in the future.[309]

One of the most thoroughly examined issues relating to the provisioning of unbundled local loops in the Texas 271 proceeding was nondiscriminatory access to xDSL-capable loops. Various parties during the April 1998 hearing and subsequent 271 collaborative process raised concerns regarding SWBT's provisioning of xDSL-capable loops.[310]

At the conclusion of its 271 proceeding, the Texas Commission found that SWBT had met its obligation under Checklist Item 4 to provide access to unbundled xDSL-capable loops based on several factors, as discussed below. The Texas Commission examined SWBT's xDSL compliance within the context of its current legal obligations, performance, and commitments made during the 271 proceeding, as well as SWBT's obligations under both the *SBC/Ameritech* merger conditions[311] and the xDSL arbitrations in Texas Commission Docket Nos. 20226 and 20272.

a. Separate Advanced Services Affiliate

In addition to SWBT's current performance on xDSL, the Texas Commission has further assurance of nondiscriminatory access to xDSL-capable loops in Texas based on the recently completed xDSL arbitrations and SBC Communications Inc.'s (SBC) creation of a separate affiliate for advanced services. Pursuant to the *SBC/Ameritech* merger conditions, SBC has already created a separate affiliate, SBC Advanced Solutions, Inc. (ASI) that will offer retail and wholesale advanced services in Texas.[312] As of December 1, 1999, ASI has been certificated to offer facilities-based, data only, telecommunications services in Texas.[313] On January 7, 2000, ASI and SWBT filed a T2A agreement with the Texas Commission.[314] Pursuant to the procedure established by the Texas Commission for adoption of the T2A, the interconnection agreement was effective upon the date of filing. SWBT asserts that ASI will begin providing advanced services in Texas on February 2, 2000. Further, in Texas, ASI will begin passing local service requests (LSRs) for UNEs to SWBT beginning on February 28, 2000.[315]

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[309] *Id.* at para. 330.

[310] *See, e.g.*, Tr. at 696-97 (Apr. 1998); Final Staff Status Report at p. 58-64.

[311] *In re Ameritech Corp. and SBC Communications Inc. For Consent to Transfer Control of Corporations Holding Commission Licenses and Lines Pursuant to Section 214 and 310(d) of the Communications Act and Parts 5, 22, 24, 25, 63, 90, 95 and 101 of the Commission's Rules*, CC Docket No. 98-141, Memorandum Opinion and Order, 14 F.C.C.R. 14712 (1999) (SBC/Ameritech merger conditions).

[312] *See* Affidavit of Lincoln Brown, Application of Southwestern Bell Telephone Company, App. A-3, Tab 2 (Jan. 10, 2000) (hereinafter "Brown Aff.").

[313] *Application of SBC Advanced Solutions, Inc. For a Certificate of Operating Authority, Order Granting Certificate of Operating Authority*, Docket No. 21479 (Dec. 1, 1999).

[314] PUCT Order No. 55, Approving the Texas 271 Agreement, Application of Southwestern Bell Telephone Company, App. C, Vol. 130, Tab 1828. Order No. 55 is included in the Texas Commission's Appendix I, Tab A-7.)

[315] Brown Aff., App. A-3, Tab 2, at para. 5.

b. Nondiscriminatory Access to xDSL Loops

The Texas Commission conducted an extensive review of xDSL provisioning by SWBT during the 271 Collaborative Process. The collaborative sessions were open to all interested parties and many CLECs participated. At the end of the collaborative process, Texas Commission staff recommended that certain provisioning issues be addressed and that a staff-proposed spectrum management process be implemented.[316] Despite efforts from Texas Commission staff, SWBT and the CLECs, xDSL requirements under Checklist Item 4 were not resolved during the collaborative sessions. As a result, the item was addressed in SWBT's Memorandum of Understanding (MOU).

During the interim between the collaborative sessions and the MOU, in December 1998, two arbitrations concerning many of the same xDSL issues were filed with the Texas Commission.[317] The parties to the arbitrations, Rhythms Links, Inc. (Rhythms), DIECA Communications, Inc. d/b/a Covad Communications Company (Covad) and SWBT reached operational interim agreements in mid-1999.[318]

i. SWBT's MOU Commitments

At the April 29, 1999 open meeting, the Texas Commission accepted SWBT's Memorandum of Understanding (MOU). In the MOU, SWBT agreed to certain broad principles regarding the provision of xDSL service, which were later incorporated into the Texas 271 Agreement as described below. The Texas Commission found the commitments to be consistent with the *Advanced Services Order* and notes that they include a unique provision relating to a twelve-month trial period[319] in which a CLEC may order loops for the provision of services even if the technology to be used does not fall within the parameters established in the *Advanced Services Order*.[320]

SWBT also affirmed that it would follow the outcome in Docket Nos. 20226 and 20272 relating to the use of xDSL service, although SWBT reserved its right to appeal those decisions.[321] SWBT, further agreed to include an attachment to the T2A, Attachment 25, which

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[316] For a detailed discussion see Texas Commission Staff Status Reports. The staff recommendation was superseded with the creation of an industry DSL working on spectrum management and compatibility issues; the members will include SWBT and CLECs and be led by the Texas Commission, who would be the final arbiter of any disputes. See discussion below.

[317] *Petition of Accelerated Connections, Inc., d/b/a ACI Corp. for Arbitration to Establish an Interconnection Agreement with Southwestern Bell Telephone Company*, Docket No. 20226 (December 11, 1998) and *Petition of DIECA Communications, Inc., d/b/a Communications Company for Arbitration of Interconnection Rates, Terms, Conditions and Related Arrangements with Southwestern Bell Telephone Company*, Docket No. 20272 (December 21, 1998). (Accelerated Communications, Inc. (ACI) changed its name to Rhythms Links, Inc. (Rhythms), and Docket No. 20226 was restyled to reflect the current name.)

[318] Covad and SWBT entered into an interim agreement on May 27, 1999. ACI and SWBT entered into an interim agreement on June 2, 1999.

[319] Commencing on October 13, 1999, the date the Texas Commission approved the Texas 271 Agreement.

[320] MOU, Attach. B, sec. V.D; Advanced Services Order at para. 67.

[321] MOU Attachment A, Checklist Item 4 – unbundled loop, Commitment 2.

would address xDSL issues. Attachment 25 combines the operational interim agreement from Docket Nos. 20226 and 20272 with the general principles contained in the MOU provisions.

ii. Texas 271 Agreement, Attachment 25: xDSL-TX

On September 22, 1999, the Texas Commission approved Attachment 25 to the Texas 271 Agreement, which contains rates, terms and conditions for xDSL-capable loops offered by SWBT to CLECs. The terms and conditions contained in Attachment 25 are consistent with recent decisions by the Commission in its *Advanced Services Order* and *UNE Remand Order*. Attachment 25 requires SWBT to provide xDSL-capable loops to CLECs for technologies that are "presumed acceptable for deployment," as well as providing loops for technologies that are considered as non-standard during a 12-month trial period. Attachment 25 includes provisions that address liability and indemnification between parties to the agreements. Attachment 25 requires SWBT to provide CLECs with access to OSS and/or functions for pre-ordering, ordering and provisioning xDSL-capable loops that SWBT is providing any other CLEC, or that SWBT is utilizing in the provision of its own retail xDSL service. SWBT is required to provide and maintain the basic parameters of the loop, but is not required to guarantee the advanced performance of the service as configured by the CLEC. Attachment 25 contains provisioning and installation intervals for xDSL-capable loops, at parity with the intervals provided to other CLECs or to SWBT's retail affiliate. The T2A performance measurements for xDSL are subject to modification after the xDSL arbitrations are finalized.[322]

CLECs are required under Attachment 25 to advise SWBT of the Power Spectral Density (PSD) mask that defines the parameters of the technology being deployed on the loop provided. If a loop technology without national industry standards for spectrum management is deployed, Attachment 25 establishes a joint working arrangement between the Texas Commission, SWBT and CLECs in which long-term, competitively-neutral spectral compatibility standards and spectrum management rules and practices will be established. Any disputes arising in the DSL working group will be subject to final determination by the Texas Commission. No CLEC or SWBT will be able to impose unilateral standards, rules or practices. Attachment 25 includes a rate schedule for xDSL-capable loops and associated charges.

Certain aspects of Attachment 25 regarding the rates, terms and conditions of xDSL-capable loops are subject to adjustment, dependent on the outcome of the recently concluded xDSL arbitration proceeding.[323]

iii. xDSL Process and PM Modifications

[322] MOU, Attachment B, Sec. VII.D.3.; T2A, Attach. 25, Sec. 10.3: "Performance measurements for xDSL will be finalized within thirty (30) days after the final Order in the xDSL Arbitration."

[323] Many of the issues regarding xDSL related loops are the subject matter of arbitration in Docket Nos. 20226 and 20272. It is the Texas Commission's position that the rulings and outcome in both dockets will be the ultimate overriding standard applicable to the provision of xDSL capable loops and service for all providers in Texas. An arbitration award was issued on November 30, 1999 in the above dockets and the Texas Commission approved interconnection agreements between the parties at its January 27, 2000 open meeting.

The Texas Commission reviewed performance data for xDSL loops for the months of September and October 1999 and requested that SWBT and data CLECs perform a data reconciliation when CLECs raised the issue of discrepancies in the performance data. CLECs had also raised issues concerning SWBT's preordering, ordering and provisioning processes, and the Texas Commission requested that all interested parties file affidavits on the xDSL processes to assist the commission in its evaluation.

In November 1999, SWBT, Covad, NorthPoint Communications, and Rhythms (data CLECs) submitted additional performance data and affidavits on access to xDSL-capable loops. SWBT's affidavit verified the then current processes. The Texas Commission staff met with SWBT and the data CLECs after it received the reconciled data and affidavits. The staff review of the reconciled data revealed that SWBT's performance was in compliance with checklist requirements. However, the review of reconciled data raised concerns that certain performance measure modifications and process changes were necessary to further ensure accurate reporting of performance and a more efficient and speedy process for obtaining xDSL-capable loops.

As a result, the Texas Commission proposed changes to the performance measurements and revisions to SWBT's processes for preorder, ordering and provisioning of xDSL-capable loops. The process changes focused on access to loop makeup information, increasing speed and flow through of xDSL orders by simplifying processes, and assuring timely installation and quality of working xDSL loops. SWBT agreed to the modifications and has implemented the changes.[324]

The process changes as recorded in the December 16, 1999 open meeting include the following:

1. SWBT will eliminate of its Selective Feeder Separation (SFS) spectrum management process so that all loops will be made available to all carriers.
2. Loops that are under 12000 feet in length will be provisioned without going through the loop qualification process (for accessing loop makeup information) for any type of DSL order, not just low-speed ADSL. (SWBT will provide a "clean loop" to the CLEC and perform any conditioning required at no cost to the CLEC.)[325]
3. The preordering and ordering processes will be streamlined and modified to eliminate unnecessary requirements and delays associated with the processes.[326]
4. The process for requesting loop make up information will allow requests via email in addition to via facsimile, which will speed up the process.[327]

[324] Chapman Aff., App. C, Vol. 138 Tab 1973, at 6.

[325] SWBT will provide the conditioning to remove those devices such as load coils and excessive bridge tap. To the extent that CLECs desire less than 2500 feet of bridge tap, then that would be a separate arrangement.

[326] *E.g.*, access to loop make-up information was moved into a separate preorder process; and loops may be ordered under an "as is" category on the order form rather than under one of SWBT's seven xDSL categories. As a result, a loop order will not be rejected based on SWBT's specifications, *i.e.*, no reject will issue because of loop length or because a loop does not meet criteria under one of SWBT's seven PSD mask categories.

[327] The e-mail request will be sent by the CLEC to the LSC, the SWBT service representative, who will send it to the SWBT engineer.

5. When a CLEC makes a loop make-up request, the loop will not be qualified on the basis of any particular PSD mask, unless the CLEC specifically so requests. The CLEC will provide PSD mask information with a loop order to be used for inventory purposes only.
6. If CLEC does not request conditioning, even when SWBT recommends that conditioning be done or believes that conditioning should be done, the loop will be provisioned in the no conditioning time frame rather than in the installation interval relating to conditioned loops.
7. Acceptance testing will be offered on a per loop basis to CLECs that are interested in doing that. And this would also factor into the performance data on installation intervals.
8. Training will be provided by SWBT on these new processes.

In addition, modifications and clarifications were made to the way the current xDSL performance measurements work:

1. The interval for returning loop make up information will start when the LSC receives the request via fax or email and will end when the LSC returns the information via fax or email.
2. The loop make up process will be measured under a parity standard, which was averaging about 3 days for both SWBT retail and CLEC requests.
3. All CLEC loops with no conditioning will be compared to SWBT's retail loops with no conditioning for parity purposes.
4. The loops for which a CLEC has specifically required conditioning will be compared to the SWBT orders that require conditioning.

Commercial Performance

The data on the average response time for loop make-up information under PM-57 shows SWBT's statewide performance for September through November exceeded the parity requirements. The average response time for August through November for CLECs was 1.99 days; the average response time for SWBT was 2.92 days.

While PM-55.1 measures the average installation interval for DSL loops, there are not many data points currently reported because the majority of due dates fall beyond the standard intervals. Where conditioning is not required, there were less than 10 data points in all market areas during the last three months except in Central/West Texas, where parity was met in October. For DSL loops requiring conditioning, there were less than 10 data points in all market areas during the last three months except in Dallas/Ft. Worth, where SWBT failed to provide parity service in October. The statewide performance for September through November shows an average interval of 17.11 days for CLECs and 10.90 for SWBT. These averages are based on CLEC orders of 10, 19 and 7 during the three month period. Although the Texas Commission was concerned about the data results, the Texas Commission believes the process changes that have been implemented give CLECs parity performance.

PM-58 measures SWBT caused missed due dates and captures more data than PM-55.1 on installation of xDSL loops. The performance data on a statewide aggregated basis for PM-58 showed that SWBT was below parity for the months of September through November. (The data collection for this measurement began in September.) The number of orders in September was 19, with only 3 orders missed; the number in October increased to 128 orders with 12 missed; and in November the number of orders increased to 346, with only 35 orders missed. Further analysis of this measurement on a disaggregated basis shows that in the Houston area in November SWBT delivered compliant performance. In the Central and West Texas area SWBT delivered compliant performance in October. In the Dallas/Ft. Worth area SWBT delivered close to parity performance in October and November. The relative performance for the three months shows that from September through November, SWBT's performance steadily improved. In addition, the Texas Commission believes that SWBT has the incentive to improve service in light of the fact that the remedy plan provides for an increased level of penalties for noncompliant performance provided for advanced and nascent services, and believes that the process modifications will improve performance results as well.

c. Conclusion

Not only are there processes currently in place in Texas that give CLECs a meaningful opportunity to compete in the provision of xDSL services, there is also the creation of the separate advanced services affiliate pursuant to the *SBC/Ameritech* merger conditions and the implementation of the interconnection agreements resulting from the xDSL arbitrations that provide the Texas Commission further assurance that CLECs in Texas have nondiscriminatory access to xDSL-capable loops. In addition to current performance measurements on xDSL, SWBT has added heightened performance guarantees for xDSL and nascent services to the remedy plan.

Based on the evidence in the record, the Texas Commission verifies that SWBT has satisfied the requirements of 271(c)(2)(B)(iv).

E. Checklist Item Five – Unbundled Local Transport

Does the access and interconnection provided by SWBT to other telecommunications carriers include local transport from the trunk side of a wireline local exchange carrier switch unbundled from switching or other services in accordance with FTA section 271(c)(2)(B)(v) and applicable rules promulgated by the Commission?

The Texas Commission finds that SWBT has satisfied the requirements of checklist item 5. SWBT provides "local transport from the trunk side of a wireline local exchange carrier switch unbundled from switching or other services." SWBT provides interoffice transmission facilities, or transport, on an unbundled basis, to requesting telecommunications carriers pursuant to section 251(c)(3).[328]

[328] *Local Competition First Report and Order*, 11 F.C.C.R. at 15714-22.